(25,876)

20792

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 1046.

SCHNEIDER GRANITE COMPANY, PLAINTIFF IN ERROR,

vs.

GAST REALTY & INVESTMENT COMPANY AND EMILY GAST.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 16, 1917.

1 In the Supreme Court of the State of Missouri.

No. 16439.

SCHNEIDER GRANITE COMPANY, Plaintiff,

vs.

GAST REALTY & INVESTMENT COMPANY and EMILY GAST, Defendants.

Writ of Error.

The President of the United States to the Honorable Judges of the Supreme Court of the State of Missouri, Greeting:

Whereas, in the record and proceeding and in the rendition of the judgment in the above entitled cause, which is now before you or some of you, between Schneider Granite Company, a corporation, plaintiff, and Gast Realty & Investment Company and Emily Gast, defendants, your court being the highest court of said state having jurisdiction of the cause, there was drawn in question the true meaning and effect of the judgment and opinion heretofore rendered in this cause by the Supreme Court of the United States and the right claimed by said plaintiff under the said judgment and opinion to have charged against the property described in the special tax bill involved in said cause so much of the amount chargeable against it according to area by the charter of the City of St. Louis as does not exceed the amount of the benefits it has received from the improvement for which said tax bill was issued, and the decision of your court was against the right thus specially set up and claimed by said plaintiff; and,

Whereas, there is alleged to be manifest error in said decision to the damage of Schneider Granite Company, the petitioner in
2 error; and,

Whereas, we are willing that if there be error it should be duly corrected, we command you, therefore, if judgment be given therein, that you send, under seal of your court, the record and proceedings in said cause to the Supreme Court of the United States, together with writ, within such time as may be necessary in order that you have the same at Washington on the 25th day of March, 1917, that the record may be then inspected by the Supreme Court of the United States to be then and there held in order that justice may be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court this 23rd day of February, A. D. 1917.

[Seal of the United States District Court, Central Division, Western District of Missouri.]

JOHN B. WARNER,
Clerk of the United States District Court for the Western District of Missouri, Central Division,
By H. C. GEISBERG, *Deputy.*

3 *Return to Writ.*

STATE OF MISSOURI, *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled cause together with all things concerning the same.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of Missouri, at Jefferson City, Missouri, this 28th day of February, A. D. 1917.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN, *Clerk.*

3½ [Endorsed:] In the Supreme Court of Missouri, No. 16439. Schneider Granite Company, Respondent, Plaintiff, vs. Gast Realty & Investment Company and Emily Gast, Appellants, Defendants. Writ of Error and Return to Writ. Filed Feb. 23, 1917. J. D. Allen, Clerk. Rodgers & Koerner, Lawyers, New Bank of Commerce Bldg., St. Louis, Mo., Att'ys for Respondent.

4 In the Supreme Court of the State of Missouri.

No. 16439.

SCHNEIDER GRANITE COMPANY, Plaintiff,

vs.

GAST REALTY & INVESTMENT COMPANY and EMILY GAST, Defendants.

Order of Allowance of Writ of Error.

On this 23rd day of February, 1917, the application of Schneider Granite Company, plaintiff in this action, for writ of error, came on to be heard, said plaintiff being represented by counsel, and it appearing to the Court from the petition filed herein and from the record

filed therewith that its application should be granted, and that a transcript of the record, proceedings and papers, upon which the judgment of the court was rendered properly certified, should be sent to the Supreme Court of the United States, as prayed, in order that such proceedings may be had as may be just.

Now, therefore, it is ordered that the writ of error be allowed upon bond being furnished by the plaintiff, conditioned according to law in the sum of Two Hundred Dollars, and that a true copy of the record, assignment of errors and all proceedings in the case in the Supreme Court of Missouri shall be transmitted to the Supreme Court of the United States duly certified according to law, in order that said court may inspect same and take such action thereon as it deems proper according to law.

W. W. GRAVES,
Chief Justice.

4½ [Endorsed:] In the Supreme Court of Missouri, No. 16439. Schneider Granite Company, Respondent, Plaintiff, vs. Gast Realty & Investment Company and Emily Gast, Appellants, Defendants. Order of Allowance of Writ of Error. Filed Feb. 23, 1917. J. D. Allen, Clerk. Rodgers & Koerner, Lawyers, New Bank of Commerce Bldg., St. Louis, Mo., Att'ys for Respondent.

5 In the Supreme Court of the State of Missouri.

No. 16439.

SCHNEIDER GRANITE COMPANY, Plaintiff,

vs.

GAST REALTY & INVESTMENT COMPANY and EMILY GAST, Defendants.

Petition for Writ of Error.

To the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and to the Associate Justices of the Court:

Schneider Granite Company, a corporation, the plaintiff in the above entitled cause, shows by this petition to this Honorable Court, that in the records, proceedings and decisions in the Supreme Court of the State of Missouri, the same being the highest court of said state in which a decision could be had in this suit, a manifest error has occurred, greatly to the damage of said Schneider Granite Company.

That, as appears in the record of proceedings there was drawn in question the true meaning and effect of the judgment and opinion heretofore rendered in this cause by this Honorable Court, and the right claimed by this petitioner under the said judgment and opinion

to have charged against the property described in the special tax bill involved in this suit so much of the amount chargeable against it according to area by the charter of the City of St. Louis as does not exceed the amount of the benefits it has received from the improvement for which such tax bill was issued, and the decision of the said Supreme Court of the State of Missouri was against the right thus specially set up and claimed by this petitioner; all of which fully appears in the records and proceedings of the case and is
6 specifically set forth in the assignment of errors filed herewith.

Wherefore, petitioner prays that a writ of error be allowed, and that a transcript of record, proceedings and papers upon which said judgment was rendered, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of such court in such cases made and provided, and that the same may be by this Honorable Court inspected and corrected in accordance with law and justice.

HICKMAN P. RODGERS, *Solicitor.*

6½ [Endorsed:] In the Supreme Court of Missouri. No. 16439. Schneider Granite Company, Respondent, Plaintiff, vs. Gast Realty & Investment Company, and Emily Gast, Appellants, Defendants. Petition for Writ of Error. Filed Feb. 23, 1917. J. D. Allen, Clerk. Rodgers & Koerner, Lawyers, New Bank of Commerce Bldg., St. Louis, Mo., Att'ys for Respondent.

7 In the Supreme Court of the State of Missouri.

No. 16439.

SCHNEIDER GRANITE COMPANY, Plaintiff,

vs.

GAST REALTY & INVESTMENT COMPANY and EMILY GAST, Defendants.

Assignment of Errors.

Now comes the plaintiff in the above entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of the writ of error in the above entitled cause from the judgment of this Honorable Court rendered on the 21st day of December, 1916:

I.

This court erred in construing the true meaning and effect of the judgment and opinion heretofore rendered herein by the Supreme Court of the United States to be that the amount chargeable according to area against the property described in the special tax bill which is the foundation of this suit, is wholly uncollectable.

II.

Upon the former hearing of this cause before the Supreme Court of the United States, that Honorable Court rendered the following opinion and judgment:

"Opinion of Supreme Court of the United States.

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit to collect a tax for paving Broadway, a street in St. Louis, levied upon land of the defendants fronting upon that street. The plaintiff, defendant in error, did the work, received an assignment of the tax and got a judgment for the amount. The only question here is whether the ordinance levying the tax under the
8 charter of the city is consistent with the fourteenth amendment of the constitution of the United States. The charter provides that one-fourth of the total costs shall be levied upon all the property fronting upon or adjoining the improvement according to frontage and three-fourths according to area upon all the property in the district, ascertained as follows: 'A line shall be drawn midway between the street to be improved and the next parallel or converging street on each side of the street to be improved, which line shall be the boundary of the district, except as hereinafter provided, namely: If the property adjoining the street to be improved is divided into lots, the district line shall be so drawn as to include the entire depth of all lots fronting on the street to be improved. . . . If there is no parallel or converging street on either side of the street improved, the district lines shall be drawn three hundred feet from and parallel to the street to be improved; but if there be a parallel or converging street on one side of the street to be improved to fix and locate the district line, then the district line on the other side shall be drawn parallel to the street to be improved and at the average distance of the opposite district line so fixed and located.' The defendants' land has a frontage on the west line of Broadway of 1083.88 feet out of a total in the district constituted said to be 4372 feet. It is an undivided tract extending back nearly a thousand feet to Church Road. On the south the adjoining property was divided into lots of small depth and on the opposite side of Broadway the next parallel street was about 300 feet from Broadway. The ordinance establishing the taxing district treated Church road as the next parallel street within the meaning of the charter, and included the defendants' tract to a depth of between four and five hundred feet, while the small lots next to it were included to only about 100 feet, the opposite lots to about 150 feet and another undivided tract on the east of Broadway was included by average distance to a depth of 240 feet. The ordinance establishing these lines was held to follow the charter and to be consistent with the fourteenth amendment by the Supreme Court of the State, 259 Mo. 153.

The legislature may create taxing districts to meet the expense of local improvements and may fix the basis of taxation without en-

countering the fourteenth amendment unless its action is palpably arbitrary or a plain abuse. Houck v. Little River Drainage District, 239 U. S. 254, 262. The front-foot rule has been sanctioned for the cost of paving a street. In such a case it is not likely that the cost will exceed the benefit, and the law does not attempt an imaginary exactness or go beyond the reasonable probabilities. French v. Barber Asphalt Co., 181 U. S. 324; Cass Farm Co. v. Detroit, 181 U. S. 396, 397. So in the case of a square bounded by principal streets the land might be assessed half way back from the improvement to the next street. Louisville & Nashville R. R. Co. v. Barber Asphalt Paving Co., 197 U. S. 430. But as is implied by Houck v. Little River Drainage District, if the law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred the law cannot stand against the complaint of one so taxed in fact. Martin v. District of Columbia, 205 U. S. 135, 139.

The City of St. Louis is shown by this case and by others in the Missouri reports to contain tracts not yet cut into city lots,
9 extending back from streets without encountering a parallel street much farther than the distance within which paving could be supposed to be a benefit. See, for instance, Gilsonite Roofing & Paving Co. v. St. Louis Fair Association, 231 Mo. 589; Granite Bituminous Paving Co. v. Fleming, 251 Mo. 210; Loth v. St. Louis, 257 Mo. 399; Wm. R. Bush Construction Co. v. Withnell, 185 Mo. App. 408. The ordinance, following the charter as construed, established a line determining the proportions in which the tax was to be borne that, after running not a hundred feet from the street, leaped to near five hundred feet when it encountered such a tract, and on the opposite side of the street was one hundred and fifty and two hundred and forty feet away. The differences were not based upon any consideration of difference in the benefits conferred, but were established mechanically in obedience to the criteria that the charter directed to be applied. The defendants' case is not an incidental result of a rule that as a whole and on the average may be expected to work well, but of an ordinance that is a farrago of irrational irregularities throughout. It is enough to say that the ordinance following the orders of the charter is bad upon its face as distributing a local tax in grossly unequal proportions not because of special considerations applicable to the parcels taxed, but in blind obedience to a rule that requires the result. And it cannot be said that the ordinance as a whole may be regarded as an individual exception under a rule that promises justice in all ordinary cases. The charter provisions as applied to a city like St. Louis must be taken to contemplate such ordinances under the construction given to it by the State courts.

Judgment reversed."

"Memorandum on Petition for Rehearing.

Mr. Justice Holmes: Our decision is limited, of course, to the particular ordinance before the court; to the assessment of three-quarters determined in the mode described, and to those who, like the plaintiff in error, have suffered from the inequalities that have no justification in law.

Motion for leave to file petition denied."

Mandate.

The mandate of the Supreme Court of the United States directs further proceedings in the case not inconsistent with the opinion of that court.

After this cause had been remanded to the Supreme Court of the State of Missouri in accordance with this opinion, plaintiff filed in said Supreme Court of Missouri a motion for judgment, praying that the cause be remanded to the Circuit Court of the City of St. Louis (the court of original jurisdiction) with directions, first: to render judgment in favor of plaintiff for the amount appear-
10 ing in the special tax bill as having been assessed against defendants' ground according to its frontage on the street improved, together with interest thereon at the rate of 8 per cent. from date of demand to date of such judgment; and, second, to charge against said ground the amount assessable against it according to area conformably to such mode for ascertaining such amount as may be prescribed by this Court in its mandate, together with interest thereon at the rate of 8 per cent. per annum from the aforesaid period.

It was plaintiff's contention that the said decision of the United States Supreme Court does not condemn the entire area assessment as bad, but only so much thereof as is in excess of benefits received, and that under such decision plaintiff was entitled to have the good separated from the bad. The Supreme Court of Missouri denied plaintiff this right, holding the entire area tax to be uncollectable, and this ruling plaintiff assigns as error.

Wherefore, the appellant prays that said judgment be reversed and this cause remanded to said Supreme Court of the State of Missouri with directions to enter judgment in accordance with the true intent and meaning of the judgment and opinion heretofore rendered by the Supreme Court of the United States, as aforesaid.

HICKMAN P. RODGERS,
Attorneys for Plaintiff in Error.

10½ [Endorsed:] In the Supreme Court of Missouri. No. 16439. Schneider Granite Company, Respondent, Plaintiff, vs. Gast Realty & Investment Company and Emily Gast, Appellants, Defendants. Assignment of Errors. Filed Feb. 23, 1917. J. D. Allen, Clerk. Rodgers & Koerner, Lawyers, New Bank of Commerce Bldg., St. Louis Mo., Att'ys for Respondent.

11 UNITED STATES OF AMERICA, *ss:*

To Gast Realty & Investment Company, a corporation, and Emily Gast, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Missouri, in Cause Number 16439, pending in said court, wherein Schneider Granite Company, a corporation, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered by the said Supreme Court of the State of Missouri in said cause as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable W. W. Graves, Chief Justice of the Supreme Court of the State of Missouri this 23rd day of February, in the year of our Lord one thousand nine hundred and seventeen.

W. W. GRAVES,
Chief Justice of the Supreme Court of the State of Missouri.

UNITED STATES OF AMERICA,
State of Missouri, ss:

Due service of the above and foregoing citation is hereby acknowledged and accepted on this 27 day of February, 1917, for and on behalf of the aforesaid Gast Realty & Investment Company, a corporation, and Emily Gast, defendants in error in the above mentioned writ of error.

HOLLAND, RUTLEDGE & LASHLY,
THOMAS L. RUTLEDGE,
Attorneys for Gast Realty & Investment Company, a Corporation, and Emily Gast, Defendants in Error.

12 *Bond on Appeal.*

No. 16439.

SCHNEIDER GRANITE COMPANY, Plaintiff,
vs.
GAST REALTY & INVESTMENT COMPANY and EMILY GAST,
Defendants.

Know all men by these presents, That the Schneider Granite Company, as principal, and Hickman P. Rodgers and William K. Koerner, as surety, of the City of St. Louis, State of Missouri, are held and firmly bound unto Gast Realty & Investment Company and Emily Gast in the full and just sum of Two Hundred Dollars to be

paid to them and their respective heirs, executors, administrators, successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally by these presents. Sealed with our seals, and dated this — day of —— 1917.

Whereas, the above named Schneider Granite Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment of the Supreme Court of the State of Missouri in the above entitled cause.

Now, therefore, the condition of this obligation is such that if the above named Schneider Granite Company shall prosecute its said writ of error to effect and answer all costs if it fail to make good its plea, then this application shall be void, otherwise to remain in full force and effect.

SCHNEIDER GRANITE CO., [SEAL.]
By JOHN STUART, *Manager.*
HICKMAN P. RODGERS. [SEAL.]
WILLIAM K. KOERNER. [SEAL.]

Approved by
THOMAS L. RUTLEDGE,
Attorney for Appellants.

Approved this 23rd day of February, 1917.
W. W. GRAVES,
Chief Justice.

13 Which said Mandate of the United States Supreme Court is in words and figures as follows:

UNITED STATES OF AMERICA, *ss:*

[SEAL.]

The President of the United States of America, to the Honorable the Judges of the Supreme Court of the State of Missouri, Greeting:

Whereas, lately in the Supreme Court of the State of Missouri, before you, or some of you, in a cause between Gast Realty & Investment Company and Emily Gast, appellants, and Schneider Granite Company, respondent, wherein the judgment of the said Supreme Court, entered in said cause, is in the following words, viz:

"Now at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be in all things affirmed and stand in full force and effect, and that the said respondent recover against the said appellants its costs and charges herein expended, and have therefor execution."

as by the inspection of the transcript of the record of the said Su-

preme Court which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and fifteen, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, reversed with costs; and that the said appellants, Gast Realty & Investment Company and Emily Gast, recover against the said respondent Five hundred and forty-nine dollars and ten cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

January 31, 1916.

14 And the same is hereby remanded to you, the said Judges of the said Supreme Court of the State of Missouri, in order that such execution and further proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the first day of April, in the year of our Lord One Thousand nine hundred and sixteen.

Costs of Appellants.

Clerk	$104.60
Printing Record	$424.50
Attorney	$20.00
	$549.10

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

15 In the Supreme Court of Missouri, Division No. 2, April Term, 1916.

And thereafter, to-wit on April 12th, 1916, the following further proceedings were had and entered of record in said cause:

16439.

SCHNEIDER GRANITE CO., Resp.,

vs.

GAST REALTY & INV. CO. et al., App's.

Comes now the said respondent, by attorney, and files its motion to enter judgment pursuant to the mandate of the Supreme Court of the United States filed herein.

And thereafter, to wit, on April 29th, 1916, the following further proceedings were had and entered of record in said cause:

16439.

SCHNEIDER GRANITE CO., Resp.,

vs.

GAST REALTY & INV. CO. et al., App's.

Come now the said appellants, by attorney, and file their motion to enter judgment herein pursuant to the mandate of the Supreme Court of the United States heretofore filed in this cause, and also file their suggestions in support of said motion.

And thereafter, to wit, on July 5th, 1916, the following further proceedings were had and entered of record in said cause:

16439.

SCHNEIDER GRANITE CO., Resp.,

vs.

GAST REALTY & INV. CO. et al., App-.

16 Now at this day it is ordered by the Court that the motion of the said respondent for judgment herein, in conformity with the mandate of the Supreme Court of the United States heretofore filed herein, be, and the same is hereby transferred to Court in Banc.

And thereafter, to wit, on July 5th, 1916, the following further proceedings were had and entered of record in said cause:

16439.

SCHNEIDER GRANITE CO., Resp.,

vs.

GAST REALTY & INV. CO. et al., App's.

Now at this day, it is ordered by the Court that the motion of the said appellants for judgment herein in conformity with the mandates of the Supreme Court of the United States, heretofore filed herein, be, and the same is hereby transferred to Court in Banc.

Which said motions for judgment of the said respondent and the said appellants respectively, are in words and figures as follows:

17 In the Supreme Court of Missouri, Division No. 2.

No. 16439.

SCHNEIDER GRANITE COMPANY, Respondent,

vs.

GAST REALTY & INVESTMENT COMPANY and EMILY GAST, Appellants.

Motion for Judgment.

Now at this day comes respondent in the above entitled cause, and moves this Honorable Court to enter judgment pursuant to mandate of the United States Supreme Court, as follows, viz:

Reversing the judgment of the Circuit Court and remanding the cause to it with directions, first: to render judgment in favor of plaintiff for the amount appearing in special tax bill as having been assessed against defendants' ground according to its frontage on the street improved, together with interest thereon at the rate of eight per cent. from date of demand to date of such judgment; and, second: to charge against said ground the amount assessable against it according to area conformably to such mode for ascertaining such amount as may be prescribed by this court in its mandate, together with interest thereon at the rate of eight per cent. per annum from the aforesaid period.

HICKMAN P. RODGERS,
Of Attorneys for Respondent.

(Printed suggestions in reference to this motion will be handed in shortly.)

Copy received April 11, 1916.

HOLLAND, RUTLEDGE & LASHLY,
Att'ys for Gast Realty & Inv. Co.

18 Which said appellants' motion for judgment is in words & figures as follows:

In the Supreme Court of Missouri, Division No. 2.

Nos. 16,439, 16,414.

SCHNEIDER GRANITE COMPANY, Respondent,

vs.

GAST REALTY AND INVESTMENT COMPANY and EMILY GAST, Appellants.

Appellants' Motion for Judgment and Suggestions in Support.

Motion for Judgment.

Come now the appellants and respectfully ask the Court to enter judgment pursuant to the opinion and mandate of the Supreme Court of the United States in this case, as follows, to-wit:

That the judgment of the Circuit Court herein be reversed
19 and the cause remanded with directions to the Circuit Court to enter judgment for the appellants and that judgment be entered for the appellants for their costs.

We prefer to have the judgment in this cause entered in the Circuit Court of the City of St. Louis, because the property to be affected is located in that city.

20 In the Supreme Court of Missouri, En Banc.

And thereafter, to-wit, on December 21st, 1917, the following further proceedings were had and entered of record in said cause:

"SCHNEIDER GRANITE COMPANY, Respondent,

vs.

GAST REALTY & INVESTMENT COMPANY and EMILY GAST, Appellants.

Appeal from the Circuit Court, City of St. Louis.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be reversed, annulled and for naught held and esteemed, and that the said appellants be restored to all things which they have lost by reason of the said judgment. It is further considered and adjudged by the Court that the said cause be

remanded to the said Circuit Court of the City of St. Louis for further proceedings to be had therein in conformity with the opinion of this Court wherein delivered, and that the said appellants recover against the said respondent their costs and charges herein expended, and have execution therefor. (Opinion filed.)

Which said opinion is in words and figures as follows, to wit:

21 In the Supreme Court of Missouri, En Banc, October Term, 1916.

No. 19464.

SCHNEIDER GRANITE COMPANY, Respondent,

vs.

INDEPENDENT BREWERIES COMPANY, Appellant.

No. 19465. No. 16439. No. 16414.

SCHNEIDER GRANITE COMPANY, Respondent,

vs.

GAST REALTY & INVESTMENT CO. et al., Appellants.

These cases have heretofore been heard and determined in Division No. 2 and the judgment of the trial Court affirmed. (259 Mo. 153.) On error to the Supreme Court of the United States there was a reversal of the judgments rendered in our former hearings on the ground that the ordinance of the City of St. Louis there involved was invalid in providing for special assessments based on the area of the property assessed without requiring an equal depth of the assessment district, thereby subjecting lot owners having a greater depth of property than those adjoining them, to unequal taxation.

Upon the coming down of the mandate of the United States Supreme Court the cases were transferred to the Court en banc, where they have been argued and submitted. A reasonable construction of the ruling of the Supreme Court of the United States is that it is limited to a holding of the invalidity of the ordinance in question only so far as the latter concerns an assessment of property for street improvement based on the area rule. In discussing the Supreme Court's opinion in Reucking Con. Co. v. Withnell (not yet reported) we reached a like conclusion.

The tax bills in the case under review clearly define the amounts due under the front foot rule as well as the area rule and
22 state the respective amounts due under each. Since we have passed upon all of the assignments of error made by the defendant in our former review of these cases and our conclusions in regard thereto except as stated, have not been questioned by the United States Supreme Court, there exists no reason or necessity for another hearing below of the matters at issue. That the tax for

street improvements under the charter of the City of St. Louis is severable there can be no question. (Collier Estate v. West Pav. Co., 180 Mo. l. c. 375), and as the amounts due under each of the methods of taxation are separately stated in the tax bills, no difficulty can be encountered in determining the amounts due in each upon the frontage basis.

We therefore reverse and remand these cases with directions to the trial court to enter up judgments in each in the amounts heretofore found to be due based on the assessments under the front foot rule, with interest thereon as authorized by Sec. 25 of Art. 6 of the charter of the City of St. Louis. And it is so ordered. All concur except Bond and Faris, JJ., not sitting.

R. F. WALKER, *J.*

23 In the Supreme Court of Missouri, en Banc, October Term, 1916.

And thereafter, to wit, on December 30, 1916, the following further proceedings were had and entered of record in said cause:

16439.

SCHNEIDER GRANITE CO., Resp.,

vs.

GAST REALTY & INV. CO. et al., App.

Comes now the said respondent, by attorney, and files its motion for a rehearing herein, and therewith files its memorandum in support of said motion. Come also the said appellants, by attorney, and file motion for a rehearing herein."

And thereafter, to-wit, on January 17th, 1917, the following further proceedings were had and entered of record in said cause:

16439.

SCHNEIDER GRANITE CO., Resp.,

vs.

GAST REALTY & INV. CO. et al., Apps.

Now at this day the court having fully considered and understood the motion of the said respondent, as also the motion of the said appellants, for a rehearing herein, doth order that the said motions, and each of them, be, and the same are hereby overruled."

Which said motion of respondent for a rehearing herein is in words and figures as follows, to wit:

24 In the Supreme Court of Missouri. En Banc.

SCHNEIDER GRANITE COMPANY, Respondent,

vs.

GAST REALTY & INVESTMENT COMPANY, Appellant.

Motion for Rehearing.

Now comes the Schneider Granite Company, respondent in the above entitled cause, and respectfully requests this Honorable Court to set aside the opinion and judgment heretofore re*h*ndered herein, and to grant respondent a rehearing for the following reasons, to-wit:

1st. This court inadvertently misconceived the true meaning and intent of the opinion of the Supreme Court of the United States rendered in this cause, in this, that this court assumes that said opinion holds the entire assessment by area here involved to be invalid; whereas, in truth and in fact, the opinion holds only so much of said assessment to be invalid as is in excess of benefits received;

2nd. This court has inadvertently overlooked the contention of this respondtnt that the charter of the City of St. Louis should be construed in the manner suggested in the dissenting opinion filed by Judge- Woodson and Graves in the case of Gilsonite Co. v. St. Louis Fair Ass'n, 232 Mo. 589 L. C. 604, 605;

3rd. This court has inadvertently overlooked the contentions made and authorities cited by this respondent in its printed brief and oral argument heretofore presented to this court.

RODGERS & KOERNER,
Attorneys for Respondent.

25 In the Supreme Court of Missouri. En Banc.

And thereafter, to wit, on January 17th, 1917, the following further proceedings were had and entered of record in said cause:

"SCHNEIDER GRANITE COMPANY, Respondent,

vs.

GAST REALTY & INVESTMENT COMPANY and EMILY GAST, Appellants.

Appeal from the Circuit Court, City of St. Louis.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be reversed, annulled and for naught

held and esteemed, and that the said appellants be restored to all things which they have lost by reason of the said judgment. It is further considered and adjudged by the Court that the said cause be remanded to the said Circuit Court of the City of St. Louis for further proceedings to be had therein in conformity with the opinion of this Court herein delivered, and that the said appellants recover against the said respondent their costs and charges herein expended and have execution therefor. (Modified opinion filed.)

Which said modified opinion is in words and figures as follows, to wit:

26 Which said modified opinion rendered January 17th, 1917, is in words and figures as follows:

In the Supreme Court of Missouri, en Banc, October Term, 1916.
January Call, 1917.

No. 16439, No. 16414, No. 19464, No. 19465.

SCHNEIDER GRANITE COMPANY, Respondent,

vs.

GAST REALTY & INVESTMENT COMPANY, Appellant.

SCHNEIDER GRANITE COMPANY, Respondent,

vs.

INDEPENDENT BREWERIES COMPANY, Appellant.

Modified Opinion.

Cases numbered 16439 and 16414 have heretofore been heared and determined in Division No. 2 and the judgments of the trial court rendered therein were affirmed. On error to the Supreme Court of the United States there was a reversal of the judgment rendered on former hearings on the ground that the ordinance of the City of St. Louis there involved was invalid in providing for special assessments for street improvements based on the area of the property assessed without requiring an equal depth of the assessment district, thereby subjecting lot owners having a greater depth of property than those adjoining them to unequal taxation. Upon the coming down of the mandate of the Supreme Court of the United States the cases above numbered were transferred to the court en banc as well as cases numbered 19464 and 19465, in which the underlying ordinance and the taxing district were the same as in cases numbered 16439 and 16414. It is conceded by counsel for appellant that the ruling of the Supreme Court of the United States is determinative of cases numbered 19464 and 19465 as well as cases 16439 and 16414, and that "the facts in all of the cases are the same, the depth of defendant's property the same and the alleged disproportionate taxation the same."

Under these circumstances it follows that a like ruling is applicable here in all of these cases.

A reasonable construction of the ruling of the Supreme Court of the United States is that it is limited to a holding of the in-
27 validity of the ordinance in question only so far as the latter concerns an assessment of property for street improvement based on the area rule.

In discussing the United States Supreme Court's opinion in Reucking Con. Co. v. Withnell (not yet reported) we reached a like conclusion.

The tax bills in the cases under review clearly define the amounts due under the front foot rule as well as the area rule and state the respective amounts due under each.

Our conclusions reached in cases numbered 16439 and 16414 have not, except as stated, been questioned by the Supreme Court of the United States. Holding as we do that our rulings are applicable alike to all of these cases, there exists no reason or necessity for another hearing below of the matters at issue. That the tax for street improvement under the charter of the City of St. Louis is severable there can be no question, (Collier Est. v. West Pav. Co., 180 Mo. l. c. 375) and as the amounts due under each of the methods of taxation are separately stated in the tax bills, no difficulty can be encountered in determining the taxes due in each upon the frontage basis.

We therefore reverse and remand these cases with directions to the trial Court to enter up judgment in each in the amounts heretofore found to be due based on the assessment under the front foot rule, with interest thereon as authorized by Sec. 25 of Art. 6 of the Charter of the City of St. Louis, and it is so ordered. The original opinion rendered herein is modified only to distinguish the facts in regard to the status after the appeals to this court of the cases here determined and the motion for rehearing filed therein is overruled.

All concur except Bond, Williams and Faris, JJ., not sitting.

R. F. WALKER, *J.*

28 In the Supreme Court of the State of Missouri.

No. 16439.

SCHNEIDER GRANITE COMPANY, Plaintiff,

vs.

GAST REALTY & INVESTMENT COMPANY and EMILY GAST, Defendants.

Præcipe of Plaintiff in Error, Respondent.

To the Clerk of the Supreme Court of Missouri:

You are hereby requested and directed to make a transcript of record to be filed in the Supreme Court of the United States, pursuant

to a Writ of Error allowed plaintiff in error (plaintiff) in the above entitled cause, being Cause Number 16439 in the Supreme Court of the State of Missouri, and to incorporate (by originals or by copies, as may be proper) into the transcript of record, the following papers and exhibits:

1. The Writ of Error of respondent with petition therefor and the order of Honorable W. W. Graves, Chief Justice of the Supreme Court of the State of Missouri, allowing said writ of error, bond and assignment of errors appertaining thereto and citation.
2. Mandate of the Supreme Court of the United States.
3. Motion filed by appellants in the Supreme Court of Missouri to enter judgment pursuant to the opinion and mandate of the Supreme Court of the United States in this case.
4. Motion filed by respondent in the Supreme Court of Missouri to enter judgment pursuant to the opinion and mandate of the Supreme Court of the United States in this case.
5. Opinion of the Supreme Court of the State of Missouri in said cause rendered on December 21, 1916.
6. Judgment of the Supreme Court of the State of Missouri in said cause.

29 7. Motion filed by respondent in the above entitled cause for rehearing of said cause.

8. Modification of said opinion rendered January 17, 1917, and judgment.
9. Order of the Supreme Court of the State of Missouri overruling said motion for rehearing.
10. Præcipe for transcript.
11. Certificate.

and file said transcript with the Clerk of the Supreme Court of the United States.

HICKMAN P. RODGERS,
Attorneys for Plaintiff in Error, Respondent.

29½ [Endorsed:] In the Supreme Court of Missouri. No. 16,439. Schneider Granite Company, Respondent, Plaintiff, vs. Gast Realty & Investment Company and Emily Gast, Appellants, Defendants. Præcipe of Plaintiff in Error, Respondent. Filed Feb. 23, 1917. J. D. Allen, Clerk. Rodgers & Koerner, Lawyers, New Bank of Commerce Bldg., St. Louis, Mo., Att'ys for Respondent.

30 STATE OF MISSOURI, *sct:*

I, J. D. Allen, Clerk of the Supreme Court of Missouri certify that the foregoing is a full, true and correct transcript of all records and proceedings as called for in the præcipe filed by plaintiff in error herein, as fully as the same appears of record or on file in my office in the case of Schneider Granite Co. v. Gast Realty & Investment Co.

In testimony whereof, I have hereunto set my hand and affixed

the seal of the Supreme Court of Missouri, at my office in the City of Jefferson, State aforesaid, this 28th day of February, 1917.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN.

Endorsed on cover: File No. 25,876. Missouri Supreme Court. Term No. 1046. Schneider Granite Company, plaintiff in error, vs. Gast Realty & Investment Company and Emily Gast. Filed April 2d, 1917. File No. 25,876.